

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	ORDER ON EXECUTION IMPACT AS
)	A MITIGATING FACTOR
vs.)	
)	Criminal No. 2:04-cr-55
Alfonso Rodriguez, Jr.,)	
)	
Defendant.)	

The United States has objected to submitting the effect a death sentence would have on Defendant's family as a mitigating factor. Under the FDPA, the defendant may submit as a mitigating factor any evidence of his character that mitigates against imposition of the death sentence. 18 U.S.C. § 3592(a)(8). Some courts have interpreted the adverse effect of the defendant's execution on his family as evidence of the defendant's character because it revealed that the defendant had "the capacity to be of emotional value to others." United States v. Fell, No. 2:01-CR-12-01, 2005 WL 1634067 at *1 (D. Vt. July 5, 2005) (quoting State v. Stevens, 879 P.2d 162, 168 (Or. 1994)). In the recent capital cases of United States v. Lawrence, from the District of Ohio, and United States v. Johnson, from the District of Iowa, the courts have also submitted execution impact as a mitigating factor. Given this precedent, the Court will permit execution impact to be submitted as a mitigating factor.

IT IS SO ORDERED.

Dated this 19th day of September, 2006.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court